tion Enactment and Section 54 Land Code. Collector is asked to give effect to the vesting by registering transmission.

The Collector of Land Revenue, Sitiawan, was unrepresented.

Murray-Aynsley, J.—In this case the Collector of Land Revenue, Sitiawan, refused to register the Petitioners who are a company incorporated in the Straits Settlements under the name of the Estate and Trust Agencies (1927) Ltd.

The Petitioners were granted Letters of Administration in the Straits Settlements of the estate of Lim Hooi Hong which letters of administration were resealed in the Federated Malay States.

Among the assets of the deceased were three pieces of land which have given rise to the present proceedings. The petitioners in the normal course of administration desired to be registered as proprietors of such lands. The Collector of Land Revenue refused.

The reason for this appeared to be that the Petitioners have not fulfilled the conditions under the British and Foreign Companies Enactment* or Part IX of the Companies Enactment which would bring them within Section 10 (c) of the Land Code. But it appears to me that the Collector of Land Revenue overlooked (e) of the same section.

As there is nothing to prevent the Petitioners from being granted Letters of Administration, which has been done in this case, they are qualified to receive alienations of State land and also to receive transfers etc. under Section 47 as representatives where they would not be so qualified in their own right.

Further I think Section 47 only refers to transactions *inter vivos* and not to transmissions *mortis causa*. Person is defined in the Interpretation Enactment.

For these reasons I consider that the Petitioners are entitled to be registered and I order accordingly.

Unfortunately no one appeared in support of the decision of the Collector of Land Revenue and I had to deal with the matter *ex parte*.

Order accordingly.

*[The British and Foreign Companies Enactment, 1912, was repealed by Enactment No. 40 of 1932. Its provisions were re-enacted and appear in Part IX of the Companies Enactment (Cap. 58)—Editor, M.L.J.]

[APPELLATE CIVIL JURISDICTION]
McELWAINE, C.J. (S.S.), GORDON-SMITH, Ag. J.A. AND CUSSEN, J.
July 8, 1939.

WAI SENG LENG v. CHAIT SINGH.

[PAHANG CIVIL APPEAL No. 1 of 1939]

Civil Procedure Code (Cap. 7) Ss. 275A, 298, 299—appointment of receiver by way of equitable execution—claim for relief by person affected by appointment—procedure.

Where an order has been obtained under Section 275A of the Civil Procedure Code appointing a receiver by way of equitable execution to receive the rent of immovable property belonging to a judgment debtor, the procedure to be adopted by the person in possession of the property whose rights have been interfered with by the appointment is laid down in Sections 298 and 299 of the Code.

CIVIL APPEAL.

Ramani for Appellant:—

The point for decision is one of procedure and falls within a small compass. The question is when an order had been obtained under Section 275(A) of the Civil P.C. what is the procedure to be adopted by any person in possession of property whose rights have been interfered with by the appointment of a Receiver. It was conceded that the practice in England would be to apply by Notice of Motion in the proceedings in which the Receiver was appointed for appropriate reliefs. That is what we did in this case. But it was contended that having regard to Sections 298 and 299 of our Code such a procedure was not competent in these Courts. The latter Sections refer in terms to property "attached in execution". We submit "attachment" and "execution" are terms of art. The property here has not been "attached" in "execution" Section 275(A) refers to "Equitable execution" and is word for word the same as Eng. 0.50, R.15(A). It has been decided in England that Equitable Execution is a mere metaphor and not "execution" at all. See: *In re Shephard*, 43 Ch. D. 131. *Morgan v. Hart*, (1914), 2 K.B. 188. Annual Practice (1939) page 914, and the cases cited therein.

No argument can be founded on the fact that the Section occurs in the Chapter on "Execution". So do the provisions as to Judgment-Debtor Summonses which are not execution.

Hastings for Respondent:—

The Indian Cases on the subject of the appointment of Receivers are not applicable.

Such Receivers were appointed under the section which is equivalent to our section 500 of the Civil Procedure Code.

This section was in the Code prior to section 179A.

That section is part of our chapter regarding execution. The procedure laid down by our Code for any objection to any form of attachment is section 299. The procedure is clear and convenient and should be followed.

Gordon-Smith, Ag. J.A.—This was an appeal from a decision of the learned Chief Justice dismissing an application by the Appellant that an Order of Court dated the 28th February, 1938, appointing a Receiver to receive the rent of house No. 64 Main Street, Kuala Lipis, the property of the Defendant, until further Order of Court, be vacated.

The Respondent as Plaintiff had obtained a decree against the Defendant and in an attempt to obtain the fruits of his judgment had obtained the appointment of a Receiver by way of equitable execution under the provisions of section 275A of the Civil Procedure Code which provision had been added to the Code in 1937 by Enactment No. 4/1937.

In the case of ordinary receivers appointed by the Court the necessary provisions are contained in Chapter XLIII of the Code—sections 500 to 503.

The Appellant in a supporting affidavit alleged that in pursuance of an agreement of the 29th April, 1930, made by him with the Defendant, the latter agreed to give him security on the house in question for the repayment of money due by the Defendant to him, the Appellant. This is not strictly correct. The Defendant agreed to transfer this house to the Appellant when he himself, the Defendant was in a position to do so, the ownership of the house then being the subject of litigations.

The house in fact has never been transferred into the name either of the Defendant or the Appellant. Apparently, however, the Defendant had some beneficial interest in the house and himself was in occupation of it but vacated it in 1931 since when the subsequent tenants paid their rent to the Appellant—apparently by permission of and with the concurrence of the Defendant.

The present tenant, in consequence of due notice by the Receiver, notified the Appellant and sent him the copy of the Order of Court appointing the Receiver to the Defendant. Hence the application by the Appellant.

The argument before the learned Chief Justice was directed to the point as to whether the Appellant had adopted the proper procedure in attempting to obtain relief.

Mr. Ramani, for the Appellant, argued both before the learned Chief Justice and before us that the appointment of a Receiver under section 275A was not execution on the property and that such property had not been attached, and quoted *In re Shephard, Atkins v. Shephard,* 43 Ch. D. and *In re a Company,* 1915 Ch. 520 in support and that therefore the procedure detailed in sections 298 and 299 was inapplicable where a third party claimed relief. Consequently, he submitted that his procedure was correct in applying for a reversal of the Order of appointment of the Receiver.

Mr. Hastings submitted, on the question of procedure, that the applicant's remedy lay in sections 298 and 299. This new section 275A had been placed in the Chapter of the Code specifically dealing with Execution of Decrees and in that part which is headed "Mode of Execution"; further that the section itself spoke of "equitable execution" and in doing so it followed Order 15 Rule 15A of the English rules yet although the expression might be a term of art, it was in effect attachment by way of execution. The result is that since 1937 the appointment of a Receiver by way of equitable execution is a mode of execution and attachment of property.

Sections 298 and 299 appear to me to provide a method for claiming relief by any third party who considers himself to be injured or prejudiced by the attachment of any property over which he claims a charge or lien and which has been attached by a decree holder by any of the methods for attachment detailed in the earlier parts of this Chapter and would apply equally to, say section 289 (in effect, the continuous garnishment of an official's monthly salary) as, in my opinion, it applies to the new section 275A.

Although the point was not raised before us, one might observe that section 275A applies the provisions of sub-sections (ii) to (ix) of section 294, to the appointment of a Receiver by way of equitable execution, apparently as if such appointment operated as a prohibitory order under sub-section (i) of such section, but there was no information before us as to whether subsections (ii) to (ix) have been complied with and I express no opinion thereon.

For the reason given I am of the opinion that the application to vacate the Order of Court was the wrong procedure to be adopted and therefore this appeal should be dismissed with costs.

McElwaine, C.J. (S.S.)—I concur.

Cussen, J.—I concur.

Appeal dismissed with costs.